



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/427,657	10/26/1999	KARI ALITALO	28967/35061A	3588

7590 04/25/2003

MARSHALL O'TOOLE GERSTEIN
MURRAY & BORUN
6300 SEARS TOWER
233 SOUTH WACKER DRIVE
CHICAGO, IL 606066402

EXAMINER

KAUSHAL, SUMESH

ART UNIT PAPER NUMBER

1636

DATE MAILED: 04/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/427,657	ALITALO ET AL.
Examiner	Art Unit	
Sumesh Kaushal Ph.D.	1636	

-- The MAILING DATE of this communication appears in the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 02/22/03.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-8, 10-18 and 21-100 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) _____ is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) 1-8, 10-18 and 21-100 are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/05/02 has been entered.

The amendments filed on 12/05/02 and 02/22/03 has been acknowledged.

Claims 1-8, 10-18, 21-100 are pending and are examined in this office action.

► *Applicants are advised to follow Amendment Practice under revised 37 CFR §1.121 (<http://www.uspto.gov/web/offices/pac/dapp/ola/preognitice/revamdtprac.htm>). Each amendment document that includes a change to an existing claim, or submission of a new claim, must include a complete listing of all claims in the application. After each claim number, the status must be indicated in a parenthetical expression, and the text of each claim under examination (with markings to show current changes) must be presented. The listing will serve to replace all prior versions of the claims in the application.*

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-8, 10-18, 22-32, 49-74, 75-100 are drawn to a method of treating a mammalian subject to inhibit restenosis of a blood vessel by administering to the subject a composition comprising a polynucleotides (SEQ ID NO:1) that encodes a VEGF-C polypeptide (SEQ ID NO:2), classified in class 514, subclass 44.

II. Claims 21, 22-32, 33-48 49-74, 75-79, 83-100 are drawn to method of treating a mammalian subject to inhibit restenosis of a blood vessel by administering to the subject a composition comprising a polynucleotides (SEQ ID NO:3) that encodes a VEGF-D polypeptide (SEQID NO:4), classified in class 514, subclass 44.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are distinct. Inventions are distinct if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In instant case the VEGF-C (SEQ ID NO:1 encoding the amino acid sequences SEQ ID NO:2) and VEGF-D (SEQ ID NO:3 encoding the amino acid sequences of SEQ ID NO:4) are structurally and functionally distinct polypeptides which have different modes of operation, different functions, and/or different effects. Furthermore searching of group I would not fully anticipate the subject matter of group II and therefore would require additional search. For example, search of a nucleotide sequences encoding VEGF-C would not anticipate the nucleotide and/or polypeptides encoding the VEGF-D. Thus these inventions are distinct and are of separate uses.

Claims 22-32, 49-79 and 83-100 are generic to a plurality of disclosed patentably distinct inventions comprising VEGF-C and VEGF-D. Should any group I or II elected, claims 22-32, 49-79 and 83-100 will be examined only to the extent that they encompass the elected subject matter

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sumesh Kaushal Ph.D. whose telephone number is 703-305-6838. The examiner can normally be reached on Mon-Fri. from 9AM-5PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yucel Irem Ph.D. can be reached on 703-305-1998. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-8724 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.



SUMESH KAUSHAL
PATENT EXAMINER